



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**
ENFORCEMENT DIVISION
DIRECTIVE

**DIRECTIVE
NUMBER
223**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: DIRECTOR'S COMPLAINTS RESULTING FROM EDD REFERRALS**
2. **PURPOSE:** To set forth the procedures for issuing and processing Director's Complaints based on illegal job orders referred from the California Employment Development Department (EDD).
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) is advised when employers attempt to place a discriminatory listing with EDD and refuse to change their selection criteria after being advised that such a listing is illegal. When the Department is so advised by EDD, a Director's Complaint may be filed.
4. **PROCEDURES:**
 - A. **Acceptance of Complaints:**
 - 1) Upon receipt of the illegal job order referral from EDD, the District Administrator will draft a formal complaint. (Refer to Attachment 1 for sample complaint format.)
 - 2) The complainant should be identified by the word "Director" followed by the name of the Department Director.
 - 3) A copy of the illegal job order referral, including a copy of the proposed complaint, will be immediately forwarded to the appropriate Regional Administrator who will process the complaint for review and approval pursuant to the procedures outlined in Directive 222, "Director's Complaints."
 - 4) In instances where the complaint *is approved*, the Regional Administrator will advise the District Administrator in writing of the decision and the District Office will proceed with processing the complaint as detailed below.

- 5) If the complaint *is not approved*, the Regional Administrator will so advise the District Administrator, in writing. The District

Administrator will notify EDD in writing of the decision. These notifications should be addressed to:

Employment Development Department
Equal Employment Opportunity Office, MIC 49
800 Capitol Mall
Sacramento, CA 95814

B. Processing Complaints:

- 1) If approved, the complaint will be registered and served by certified mail to the attention of the owner of the business.
- 2) The District Administrator is authorized to sign the complaint on behalf of the Department Director, and should sign *adding the words "for (name of Director)."*
- 3) The service notice (refer to Attachment 2 for sample notice) is to be accompanied by a proposed settlement agreement (refer to Attachment 3 for sample agreement), the privacy notification (DFEH-100-02), the Guide to Respondents (DFEH-160), and a pattern survey (DFEH-600-14 or DFEH-600-15), if appropriate.
- 4) Where the complaint is jurisdictional with the U.S. Equal Employment Opportunity Commission (EEOC), it is to be dual filed.
- 5) The District Administrator will forward copies of the served complaint to the Director, the Deputy Director Enforcement Division, and the appropriate Regional Administrator.

C. Investigation:

- 1) The District Administrator will be responsible for assigning the case to a Consultant who will attempt to resolve it.
- 2) If a settlement is not reached within ninety (90) days, the case will be transferred to the Special Investigation Unit (SIU) for further investigation.
- 3) The SIU will process and close the case in accordance with the procedure described in Directive 222, "Director's Complaint."

- 4) A copy of the original charge, the closing report, and settlement agreement (as appropriate) will be sent to the EEO office of EDD at the address shown in 4.A.5) above (refer to Attachment 4 for sample letter). A 14-day letter is not required for Director's Complaints.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

SAMPLE LANGUAGE FOR COMPLAINTS RESULTING FROM EDD REFERRALS

List Complainant as follows:

GUTIERREZ, Nancy C. (Ms.)
2014 T Street, Suite 210
Sacramento, CA 95814
Sacramento County
(916) 227-2873

Director Gutierrez bases this complaint on her information and belief that:

The Respondent engages in employment practices that discriminate unlawfully against persons because of (give basis).

In attempting to place a job order for (give position title) with the California Employment Development Department on or about (give date), respondent (give practice complained of *).

Date

Respondent's Representative
Respondent's Representative's Title
Business Entity
Address

RE: Case Number
Case Name

Dear

NOTICE OF FILING OF DISCRIMINATION COMPLAINT

Enclosed is a copy of the above-referenced complaint filed with the Department of Fair Employment and Housing. The complaint has been filed by the Department Director, pursuant to Government Code section 12960, based on information submitted by the California Employment Development Department. This shall constitute service for the complaint in accordance with Government Code section 12962.

You are hereby requested, within fourteen (14) calendar days, to respond to the allegation and to submit any documentary evidence you may have to refute the claim of discrimination. In addition, you are requested to furnish:

1. Current statistics of your pattern of employment (complete enclosed form DFEH-600-15). A copy of your most recent EEOC Data Collection form may be substituted.
2. List all hires, by name, sex, ethnic group, job title, and date of hire for the prior twelve (12) months.
3. Describe your selection procedures, including the name of the person(s) involved in hiring decisions.

We will conduct an investigation to determine the accuracy of the information given us by the Employment Development Department. If you would rather resolve the matter immediately, a proposed settlement agreement is enclosed for your convenience. If the case is settled, you probably need not submit the requested information. In the event you wish to resolve the matter but prefer to revise the agreement, please telephone me at the number listed below.

Consultant:

Phone:

Certified Mail: RETURN RECEIPT REQUESTED

SETTLEMENT AGREEMENT

RESPONDENT:

CASE NO:

COMPLAINANT:

EEOC NO:

In exchange for the promise made by the Respondent contained in this agreement, the Director of the Department of Fair Employment and Housing agrees to withdraw from consideration by any State or federal agency or other governmental entity the subject complaint of discrimination in employment.

In exchange for the promises of the Director of the Department of Fair Employment and Housing, State of California, contained in this agreement, the Respondent agrees to:

1. Consider all persons qualified for available positions without regard to their race, national origin, ancestry, marital status, age (over 40), sex, physical/mental disability, medical condition (cancer only), religion, or color.
2. Undertake special efforts to hire members of groups previously excluded from employment.
3. List all job vacancies with the Employment Development Department.
4. Display the Department of Fair Employment and Housing Discrimination in Employment poster.
5. Retain, in accordance with the Fair Employment and Housing Act, all employment applications and personnel records for a minimum of two years.

Within one year of the effective date of this agreement, the Department of Fair Employment and Housing may conduct a compliance review to determine whether the terms contained in this agreement have been fully obeyed and implemented.

It is understood that this agreement does not constitute an admission by the Respondent of any violation of the Fair Employment and Housing Act.

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The Department of Fair Employment and Housing participating in this agreement does not reflect any determination by the Department on the merits of the complaint. Furthermore, the Department does not waive its rights to process any other complaint against the Respondent.

Department of Fair Employment & Housing Date _____ Director,

Respondent _____ Date _____

Date

Employment Development Department
Equal Employment Opportunity Office, MIC 49
800 Capitol Mall
Sacramento, CA 95814

RE: Case Name
Case Number

Attached, for your information, is a copy of the report on the disposition of the above complaint which was referred to the Department of Fair Employment and Housing by your Department.

Your cooperation in making these referrals is appreciated.

Sincerely,

District/SIU Administrator